

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Oneida Consumer, LLC, *et al.*,

Plaintiffs,

v.

Elyse Fox,

Defendant.

Case No: 2:20-cv-2043

Judge Graham

Order

This matter came before the court for a telephone conference on August 14, 2020, following the issuance of the court's August 10, 2020 opinion and order denying plaintiff's motion for a preliminary injunction.

During the conference, plaintiff identified what it believes to be its core claim going forward: Oneida claims that once it terminated its relationship with defendant Ms. Fox on April 1, 2020, Ms. Fox was no longer authorized to transfer to her customers the warranty on the Oneida goods which she purchased from Oneida or Robinson and still had in her inventory, because Oneida is unable to be assured that Ms. Fox is taking measures to protect the quality of the goods while they are in her possession.

The court finds that the parties' efforts should be directed to this claim and is providing for a modified discovery and briefing schedule to that end.

The court hereby modifies the July 31, 2020 discovery and scheduling order to narrow the scope of discovery. Discovery should be tailored to the issues of the transferability of the Oneida warranty to a reseller's customers and of the quality control measures which Oneida and Robinson required of resellers and which Ms. Fox is and has been providing for her inventory of products purchased from Oneida and Robinson. Discovery should therefore include Oneida's and Robinson's policies, practices, and procedures (vis-à-vis resellers) with respect to the warranty accompanying Oneida flatware sold during the time period at issue in this case. It includes any agreements, understandings or courses of dealing that Oneida and Robinson had with Ms. Fox regarding transferability of the warranty and regarding quality control measures over the flatware in her possession. It includes too discovery of Ms. Fox's past and current practices for storing and caring

for the flatware in her inventory. The discovery deadlines established in the July 31 order shall remain the same.

The parties are ordered to submit briefs addressing the legal issues relevant to plaintiff's claim. This would include, but is not limited to, a trademark owner's right to take steps to protect its trademark when it believes that a reseller is failing to exercise reasonable care of the goods. This includes too the following issues: does Ms. Fox have a duty (under contract, common law, Uniform Commercial Code) to care for the product; does a failure or refusal by a reseller to enter into an agreement allowing Oneida to inspect the goods give Oneida a basis to cancel the warranty; can a trademark owner later cancel a warranty that was part of the sale transaction by de-authorizing a reseller.

Defendant's memorandum of law on the issue of transferability of the warranty is due on August 28, 2020. Plaintiff's response brief is due September 8, 2020. Defendant's reply brief is due September 11, 2020.

s/ James L. Graham  
JAMES L. GRAHAM  
United States District Judge

DATE: August 14, 2020